

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KING A JAMES

Claimant

MASTERTSON PERSONNEL INC

Employer

APPEAL NO. 17A-UI-07910-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/20/16

Claimant: Appellant (1)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 24, 2017, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on August 22, 2017. After said initial hearing, the administrative law judge reopened the hearing and reset for September 12, 2017. At that time, claimant/appellant did not answer when called for the hearing. The claimant did participate in the initial August 22, 2017 hearing. The employer did participate through Jim Robertson.

ISSUES:

Whether the appeal is timely?

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on March 24, 2017. Claimant stated that he did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 3, 2017. The appeal was not filed until August 4, 2017, which is after the date noticed on the disqualification decision.

Claimant has not only this matter pending with IWD, but also an additional matter pending in case 17A-UI-06584. Subsequent to the decision being entered in this case, claimant also had pending 17A-UI-07911 which dealt with overpayment of benefits in this matter.

As claimant referenced the decision entered by another administrative law judge in 17A-UI-06584, this judge read through that decision. In that matter, claimant stated he was incarcerated from March 27, 2017 through June 20, 2017. Claimant further stated he went to the Mason City office of IWD on June 29 and completed an appeal on the 17A-UI-06584 matter. Claimant did not mention to IWD about his other employment or inquire as to the status of that case. The IWD worker stated that claimant's claim was locked.

Claimant stated that he did not know of the decision entered in this matter until he found out after he'd received the decision in 17A-UI-06584, yet he still had his benefits locked out. Upon further investigation, he then found out that he had both been denied in the matter regarding the instant employer, and that he had an overpayment in this matter. Then he filed his appeal on August 4, 2017.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begin running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance

with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). In ruling this way, the court recognizes that claimant was in custody and therefore he might not have received the denial in this matter at the time it was sent. But, claimant did act in a timely manner once he got out of custody regarding 17A-UI-06584, when claimant pursued an appeal in that matter within 10 days of his release from jail. Although that decision was entered on April 12, 2017, claimant's appeal was deemed to have been timely as filed within ten days of his release from jail. Claimant knew or should have known that he had multiple job separations as he'd filed at different times from separations from two different companies. Yet claimant did not file his appeal in this reference number at the same time as his other appeal, even though this unemployment insurance decision preceded that in reference 3. His appeal in this matter was not timely.

DECISION:

The March 24, 2017, reference 05, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn